

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: AR & T Committee Analyst: Darrine Distefano Bill Number: AB 2897
Related Bills: None Telephone: 845-6458 Introduced Date: 03-09-2000
Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Amend Corporations Code to Reference Correct R&TC Section/Interest on Erroneous Refunds/Delete Provision Added in Error/Technical Change to Correct Reference to "Subsection" to "Subdivision"

SUMMARY

Under the Revenue and Taxation Code (R&TC) and the California Corporations Code, this bill, sponsored by the Franchise Tax Board, would make the following changes:

- 1) correct the reference to a renumbered section regarding the imposition of the \$50 penalty for any corporation which fails to file statement with the Secretary of State (SOS);
- 2) clarify that interest on erroneous refund amounts begins to accrue 30 days from the date of notice and demand for repayment and delete a reference on how interest will accrue for corporations on amounts that were erroneously made or allowed when an action is brought to court;
- 3) replace incorrect references to the term "subsection" with the term "subdivision."

EFFECTIVE DATE

This bill would be effective beginning January 1, 2001 and operative after that date.

LEGISLATIVE HISTORY

SB 2176 (2000) contains a provision identical to #2 above.

SPECIFIC FINDINGS

1. Corporations Code

The Corporations Code requires every corporation to file a statement containing: (1) the names and complete business or residence addresses of its chief executive officer, secretary and chief financial officer; and (2) the street address of its principal office in California. This statement must be filed with the Secretary of State (SOS) within 90 days after the corporation files its original Articles of Incorporation, as well as annually thereafter. The SOS is required to mail a notice of delinquency to any corporation that fails to file this statement. If the corporation does not respond within 60 days, the SOS certifies the name to the Franchise Tax Board (FTB). Upon this certification, the department is required to assess against the corporation a \$50 penalty pursuant to a specific R&TC section.

Board Position:	Department Director	Date
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	Alan Hunter for GHG	4/5/00

Corporations Code Section 6810 references R&TC Section 25936 as the basis for the imposition of the \$50 penalty. However, the R&TC penalty section was renumbered from Section 25936 to Section 19141 in 1993 (SB 3, Stats. 1993, Ch. 31) and the Section 25936 no longer exists. Only three of the four references to the former R&TC section within Section 6810 were corrected by SB 3 to reflect the renumbered R&TC section.

This bill would eliminate the reference to an obsolete and non-existent section and replace it with the correct section regarding the imposition of the \$50 penalty for any corporation that fails to file a statement with the SOS.

2. Interest on Erroneous Refunds

Existing state law requires interest to be assessed upon any tax deficiency. The interest is assessed, collected, and paid in the same manner as the tax deficiency itself and is calculated at a rate that is adjusted annually. Interest is imposed from the date that the tax was required to be paid or, if the tax is paid in installments, from the date prescribed for payment of the first installment, until the date the tax is paid.

Existing state law also requires the assessment of interest on any tax refund or credit that the FTB makes or allows and later determines to be erroneous. For an erroneous refund, the FTB must provide notice and demand for repayment within two years after the refund or credit is issued or during the period within which the FTB may mail a notice of proposed deficiency assessment, whichever time period ends later. Interest on erroneous refund or credit amounts does not begin accruing until 30 days from the date the FTB mails the notice and demand for repayment.

Existing state law allows the FTB to recover any erroneous refund or credit, and any related interest, in a court action. However, the section that allows this court action specifies both that interest is calculated from the date the FTB mails the notice and demand for repayment and, for corporations, interest must be calculated from the date the refund was made or the credit allowed.

The **existing state law** regarding the computation of interest with respect to a court action is in conflict with the more general state law that describes when the calculation of interest begins on an erroneous refund amount. The department's current practice is to follow the state law that allows 30 days from the date of notice and demand before beginning to accrue interest, rather than accruing interest from the day the notice is mailed or from when the erroneous refund or credit amount was made or allowed. Under current practice, interest on erroneous refunds to individuals and corporations is calculated in the same manner.

This bill would clarify that interest on erroneous refund amounts begins to accrue 30 days from the date of notice and demand for repayment.

This bill also would delete the subdivision that addresses how interest will accrue for corporations on amounts that were erroneously made or allowed when an action is brought to court.

3. Banks and Financial Corporations

Certain nomenclature is used to describe the 29 Codes in California Law and the different areas within these Codes. The FTB primarily administers three parts of Division 2 (Other Taxes) of the R&TC - Part 10, the Personal Income Tax Law; Part 10.2, the Administration of Franchise and Income Law; and Part 11, the Bank and Corporation Tax Law. Each Part is further divided into Chapters, which typically consist of several Articles. Within each Article are numerous individual Code sections, which are further separated into subdivisions, paragraphs, subparagraphs, clauses and subclauses.

R&TC Section 23188, regarding the assessment, payment, or collection of taxes, uses the term "subsection" in three separate instances, even though "subdivision" is the proper nomenclature.

This bill replace all references to the term "subsection" with the term "subdivision" within R&TC Section 23188.

Policy Considerations

This bill would eliminate a contradiction in state law by clarifying when interest will accrue for refund or credit amounts that were erroneously made or allowed.

This bill would prevent confusion for taxpayers or the department when researching state law and will keep all R&TC references consistent.

Implementation Considerations

Implementation of this bill could be handled during the department's annual updates.

Fiscal Impact

Departmental Costs

This bill would not impact the department's costs.

Tax Revenue Estimate

This bill would not affect state income tax revenue.

BOARD POSITION

Support.

At its December 16, 1999, meeting, the Franchise Tax Board voted to sponsor the language contained in this bill.